

REMARKS

Claims 1-8 are all of the claims pending in the application.

I. Formal Matters

Applicant respectfully requests that the Examiner return the form PTO/SB/08 submitted with the Information Disclosure Statement filed on January 17, 2006, indicating consideration of all of the references listed on the form. Applicant respectfully notes that the Examiner crossed out the foreign patent document EP 0 946 070. Applicant hereby submits another copy of the foreign patent document EP 0 946 070. Applicant further notes that the Examiner did not initial next to the non patent literature document 3GPP TS 25.214 V3.7.0, which is present in the Image File Wrapper.

II. Summary of the Office Action

The Examiner withdrew the objection to claims 1-8. The Examiner withdrew the rejections of claims 1-8 under 35 U.S.C. § 102(a). The Examiner newly rejected claims 1-8 under 35 U.S.C. § 103(a).

III. Improper Finality

Applicant respectfully submits that a new grounds of rejection has been presented in the present Office Action that was not necessitated by any amendment made by the Applicant.

Accordingly, Applicant submits that the finality of the present Office Action is premature and, therefore, respectfully requests the Examiner to withdraw the finality.

Claims 1-4, 6, and 7 were amended without narrowing in the Amendment filed on January 4, 2008. Accordingly, Applicant respectfully submits that the current grounds of rejection of claims 1-8 should have been made of record by the Examiner in the October 4, 2007,

Office Action. By making the present Office Action a final action, Applicant has not been afforded the opportunity to respond by amending claims 1-8 as a matter of right.

Based on the foregoing, Applicant respectfully requests that the finality of the present Office Action be withdrawn.

IV. Claim Rejections under 35 U.S.C. § 103(a)

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,405,021 to Hamabe (hereinafter "Hamabe") in view of U.S. Patent No. 6,937,583 to Czaja et al. (hereinafter "Czaja"). Applicant respectfully traverses these rejections and respectfully requests the Examiner to reconsider these rejections at least in light of the comments which follow.

The Examiner appears to concede that Hamabe does not teach or suggest "determining up-transmission power using only up-transmission power instruction information from radio base stations having down-links of at least a predetermined communication quality, from among the up-transmission power instruction information received from the radio base stations," as recited, *inter alia*, in claim 1. However, the Examiner appears to allege that Czaja teaches this feature. Applicant respectfully disagrees.

Czaja does not teach or suggest determining up-transmission power using only up-transmission power instruction information from radio base stations having down-links of at least a predetermined communication quality. Instead, according to Czaja, a base station 12 controls the transmitter power output of the mobile station 10 (*see* col. 3, lines 15-16 of Czaja). If the base station 12 determines that the signal strength of the RTC 32 requires an adjustment, the mobile station transmitter output power is adjusted according to power control commands transmitted to the mobile station 10 (*see* col. 3, lines 18-21 of Czaja). The base station 12

transmits power control commands to the mobile station 10 over a reverse power control channel (RPCC) 34 (*see* col. 3, lines 22-24 of Czaja). However, a mobile station communicates with an active set of base stations, typically 1-4 base stations (*see* col. 3, lines 61-63 of Czaja). Accordingly, multiple base stations may send power control commands to a mobile station, and the mobile station transmitter output power may be adjusted according to power control commands from multiple base stations.

Czaja does not teach or suggest using only instructions from base stations having downlinks of at least a predetermined communication quality. Moreover, Czaja fails to teach or suggest using only instructions from base stations meeting any specific criteria. Instead, Czaja teaches using “Service_fwd_pwr” and “Isho_offset” values to determine the forward link transmit power of a target base station (rather than of a mobile station) (*see* col. 7, lines 45-48 of Czaja). Accordingly, Applicant respectfully submits that Hamabe and Czaja fail to teach or suggest determining up-transmission power using only up-transmission power instruction information from radio base stations having down-links of at least a predetermined communication quality, from among the up-transmission power instruction information received from the radio base stations.

Thus, for at least the above reasons, Applicant respectfully submits that claim 1 is patentable over Hamabe. Claims 3 and 6 recite features similar to, although not necessarily coextensive with, the features discussed above with respect to claim 1. Accordingly, Applicant respectfully submits that claims 3 and 6 are patentable over Hamabe at least for the reasons discussed above with respect to claim 1. Applicant respectfully submits that claims 2, 4, 5, 7, and 8 are patentable over Hamabe at least by virtue of their dependency on claims 1, 3, or 6.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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